

REMARKS

A. Objections to Drawings

In the Office Action mailed on April 20, 2004, the drawings were objected to for failing to show the invention recited in claim 23. In view of the cancellation of claim 23, the objection has been overcome and should be withdrawn.

B. 35 U.S.C. § 112, First Paragraph

Claims 23, 27 and 111 were rejected under 35 U.S.C. § 112, first paragraph, because the claims were not described in the specification in such a way to enable one skilled in the art to make and/or use the claimed invention. In particular, claims 23, 27 and 111 were rejected because FIG. 22 failed to disclose two arms and a radiation source. Applicants traverse this rejection. The embodiment of FIG. 22 shows a C-arm 704 that has an imager 404 attached at one portion of the arm 704 and x-ray tube 402 at another portion of the arm 704. Applicants believe that each of these portions can be considered to be an arm. Furthermore, one of ordinary skill would be able to make the claimed invention based on the description in Applicants' specification regarding FIG. 22. Accordingly, there is support for claims 23, 27 and 111 and so the rejection is improper and should be withdrawn. Despite the impropriety of the rejection, claims 23, 27 and 111 have been canceled and so the rejection is rendered moot and should be withdrawn.

Note that since the rejections of claims 23, 27 and 111 have been shown to be

improper and the claims are being canceled in order to expedite prosecution of the application and have claims 1-22, 26, 28-35, 64-70, 73-80, 94-96, 99-110, 112-118 and 120-127 granted in a patent in an expeditious manner, the cancellation of claims 23, 27 and 111 is not related to patentability as defined in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

C. 35 U.S.C. § 103

Claims 71, 72, 97, 98, 119 and 128 were rejected under 35 U.S.C. § 103 as being obvious in view of Swerdloff et al., Hu and Roos et al. Applicants traverse this rejection. In particular, independent claim 71 recites “controlling said path of said radiation based on said image” and claim 97 recites “controlling a radiation therapy treatment plan involving said radiation source based on said image.” Neither Swerdloff et al., Hun ore Roos et al. discloses or suggest controlling a radiation path or a radiation therapy treatment plan based on an image. Without such suggestion, the rejection is improper and should be withdrawn. Despite the improperness of the rejection, claims 71, 72, 97, 98, 119 and 128 have been canceled in order to expedite prosecution of the application so that a number of claims can be granted in a patent.

Note that since the rejections of claims 71, 72, 97, 98, 119 and 128 have been shown to be improper and the claims are being canceled in order to expedite prosecution

of the application and have claims 1-22, 26, 28-35, 64-70, 73-80, 94-96, 99-110, 112-118 and 120-127 granted in a patent in an expeditious manner, the cancellation of claims 71, 72, 97, 98, 119 and 128 is not related to patentability as defined in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

D. Claims 5-10, 14, 18, 20, 21, 26 and 94

Claims 5-10, 14, 18, 20, 21 and 26 have been amended to correct an inadvertent omission of deleting the phrase “amorphous silicon” so as to be consistent with the terminology of claim 1 and claim 26. Since the amendments broaden the scope of the claims, the principles of *Festo* do not apply to claims 5-10, 14, 18, 20, 21 and 26.

Claim 94 has been amended to delete the word “silicon” since it is not required for patentability of the claim. Since the amendment broadens the scope of the claim, the principles of *Festo* do not apply to claim 94.

E. Statement of Reasons for Allowance

It is noted that a statement of reasons for allowance for claims 1-22, 28-35, 64-69, 73-77, 95, 96, 99-110, 113-117 and 123-127 has been given. Applicants traverse the statement to the extent that there are other and broader reasons for the allowance of the claims.

It is noted that a statement of reasons for allowance for claims 26 and 112 has

been given. Applicants traverse the statement to the extent that there are other and broader reasons for the allowance of the claims. In addition, the statement refers to an amorphous silicon flat-panel imager. The recitation of “amorphous silicon” is not necessary for the patentability of the claim and so the phrase has been deleted and so the statement needs to be amended to take into account the deletion of the phrase in claim 26.

CONCLUSION

In view of the arguments above, Applicants respectfully submit that all of the pending claims 1-22, 26, 28-35, 64-70, 73-80, 94-96, 99-110, 112-118 and 120-127 are in condition for allowance and seeks an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an

interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J.C. Freeman", is written over a horizontal line.

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